

MT LEGISLATIVE HISTORY

Chapter 209 1987

Bill H 42 S _____

Original bill & hist. ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 09 ✓ C

Hearing Date(s) Mar 03 ✓ C

_____ C

_____ C

_____ C

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_____ C

Date Out Jan 09 ✓ C

Mar 03 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HOUSE FINAL STATUS

5/01 TRANSMITTED TO GOVERNOR
 5/15 SIGNED BY GOVERNOR
 CHAPTER NUMBER 658 EFFECTIVE DATE: 7/01/87

HB 40 INTRODUCED BY GLASER
 ESTABLISH A 100 PERCENT MONTANA LIMITED BLENDED GRAIN
 MARKETING PROGRAM
 BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON
 AGRICULTURAL PROBLEMS

1/05 INTRODUCED
 1/05 REFERRED TO AGRICULTURE, LIVESTOCK &
 IRRIGATION
 1/05 FISCAL NOTE REQUESTED
 1/07 HEARING
 1/07 FISCAL NOTE RECEIVED
 1/10 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/13 REVISED FISCAL NOTE REQUESTED
 1/19 REVISED FISCAL NOTE RECEIVED
 1/20 2ND READING PASSED 78 17
 1/20 REREFERRED TO APPROPRIATIONS
 1/29 HEARING
 2/21 HEARING
 2/21 TABLED IN COMMITTEE

HB 41 INTRODUCED BY WINSLOW
 CREATE MATURE DEFENSIVE DRIVING ACT; REDUCE PREMIUM
 RATES OVER AGE 55

1/05 INTRODUCED
 1/05 REFERRED TO BUSINESS & LABOR
 1/07 HEARING
 1/07 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/15 2ND READING PASSED AS AMENDED 90 8
 1/17 3RD READING PASSED 92 5

TRANSMITTED TO SENATE
 1/21 REFERRED TO BUSINESS & INDUSTRY
 2/06 HEARING
 2/11 COMMITTEE REPORT--BILL CONCURRED
 2/17 2ND READING CONCURRED 50 0
 2/19 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
 2/23 SIGNED BY SPEAKER
 2/23 SIGNED BY PRESIDENT
 2/24 TRANSMITTED TO GOVERNOR
 2/25 SIGNED BY GOVERNOR
 CHAPTER NUMBER 49 EFFECTIVE DATE: 10/01/87

HB 42 INTRODUCED BY COBB
 CLARIFY LEGAL STANDARD GOVERNING LANDOWNER LIABILITY

1/05 INTRODUCED
 1/05 REFERRED TO JUDICIARY
 1/09 HEARING
 1/12 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/14 2ND READING PASSED 97 1
 1/15 3RD READING PASSED 97 1

TRANSMITTED TO SENATE
 1/21 REFERRED TO JUDICIARY

3/03 HEARING
 3/04 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/07 2ND READING CONCURRED 47 0
 3/10 3RD READING CONCURRED 49 0

 RETURNED TO HOUSE WITH AMENDMENTS
 3/16 2ND READING AMENDMENTS CONCURRED 93 1
 3/17 3RD READING AMENDMENTS CONCURRED 93 3
 3/19 SIGNED BY SPEAKER
 3/20 SIGNED BY PRESIDENT

 3/21 TRANSMITTED TO GOVERNOR
 3/25 SIGNED BY GOVERNOR
 CHAPTER NUMBER 209 EFFECTIVE DATE: 10/01/87

HB 43 INTRODUCED BY SALES
 ESTABLISHING HERITAGE DAY, JANUARY 15, AS LEGAL
 HOLIDAY; DELETING COLUMBUS DAY

1/05 INTRODUCED
 1/05 REFERRED TO STATE ADMINISTRATION
 1/09 HEARING
 FAILED TO MEET TRANSMITTAL DEADLINE

HB 44 INTRODUCED BY RAPP-SVRCEK
 SCALING METHODS TO PAY FOR LOGGING AND HAULING
 FOREST PRODUCTS

1/05 INTRODUCED
 1/05 REFERRED TO BUSINESS & LABOR
 1/06 HEARING
 1/06 COMMITTEE REPORT--BILL NOT PASSED AS AMENDED
 1/09 ADVERSE COMMITTEE REPORT ADOPTED 73 22

HB 45 INTRODUCED BY SWIFT
 RAISE LEGAL DRINKING AGE FROM 19 TO 21

1/05 INTRODUCED
 1/05 REFERRED TO JUDICIARY
 1/07 HEARING
 2/12 TABLED IN COMMITTEE

HB 46 INTRODUCED BY WILLIAMS, M.
 RULEMAKING AUTHORITY FOR DEPARTMENT OF REVENUE FOR
 PUBLIC SERVICE COMMISSION AND CONSUMER
 COUNSEL TAX
 BY REQUEST OF DEPARTMENT OF REVENUE

1/05 INTRODUCED
 1/05 REFERRED TO TAXATION
 1/07 HEARING
 1/09 COMMITTEE REPORT--BILL NOT PASSED
 1/10 ADVERSE COMMITTEE REPORT ADOPTED 77 15

HB 47 INTRODUCED BY HARRINGTON
 INCREASING PENALTIES FOR MOVING MOBILE HOME WITH
 UNPAID PROPERTY TAXES -- DISTRIBUTION
 BY REQUEST OF DEPARTMENT OF REVENUE

1/05 INTRODUCED
 1/05 FISCAL NOTE REQUESTED
 1/05 REFERRED TO TAXATION
 1/08 FISCAL NOTE RECEIVED
 1/09 HEARING

1 HOUSE BILL NO. 42

2 INTRODUCED BY COBB

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LEGAL
5 STANDARD GOVERNING LANDOWNER LIABILITY; AND AMENDING
6 SECTIONS 23-2-321 AND 70-16-302, MCA."

7
8 WHEREAS, the Montana Supreme Court in Limberhand v. Big
9 Ditch Co., __Mont.__, 706 P.2d 491 (1985), replaced the
10 traditional invitee, licensee, and trespasser standards for
11 measuring landowner liability with a single standard of
12 reasonable care; and

13 WHEREAS, this single standard adopted by the Montana
14 Supreme Court conflicts with the policy of restricted
15 landowner liability established by the Legislature in
16 sections 23-2-321 and 70-16-302, MCA.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 Section 1. Section 23-2-321, MCA, is amended to read:

20 "23-2-321. Restriction on liability of landowner and
21 supervisor. (1) A person who makes recreational use of
22 surface waters flowing over or through land in the
23 possession or under the control of another, pursuant to
24 23-2-302, or land while portaging around or over barriers or
25 while portaging or using portage routes, pursuant to

1 23-2-311, ~~does-not-have-the-status-of---invitee--or--licensee~~
2 and is owed no duty by a landowner, his agent, or his tenant
3 other than that provided in subsection (2).

4 (2) A landowner, his agent, or tenant is liable to a
5 person making recreational use of waters or land described
6 in subsection (1) only for an act or omission that
7 constitutes willful or wanton misconduct.

8 (3) No supervisor or any member of the arbitration
9 panel who participates in a decision regarding the placement
10 of a portage route is liable to any person who is injured or
11 whose property is damaged because of placement or use of the
12 portage route except for an act or omission that constitutes
13 willful and wanton misconduct."

14 Section 2. Section 70-16-302, MCA, is amended to read:

15 "70-16-302. Restriction on liability ~~to-permittee of~~
16 landowner or tenant. A landowner or tenant who permits, by
17 act or implication, any person to enter upon any property in
18 the possession or under the control of such landowner or
19 tenant for any recreational purpose without accepting a
20 valuable consideration therefor does not by granting such
21 permission extend any assurance that such property is safe
22 for any purpose or ~~confer-upon owe~~ such a person ~~the-status~~
23 ~~of-invitee-or-licensee-to-whom~~ any duty of care ~~is-owed~~, and
24 ~~such~~. A landowner or tenant ~~shall-not-be is~~ liable to such
25 person for any injury to person or property ~~resulting-from~~

LC 0366/01

1 any only for an act or omission ~~of-such-landowner-or--tenant~~
2 ~~unless--such--act--or--omission~~ that constitutes willful or
3 wanton misconduct."

-End-

committee for their consideration as to whether they wanted to address them.

There were no proponents or opponents and no further questions. The hearing on HB #53 was closed.

CONSIDERATION OF HOUSE BILL #42: Representative John Cobb, House District #42, sponsor of the bill, stated that the purpose of this bill was to clarify a ruling of the Montana Supreme Court. Rep. Cobb submitted amendments to this bill. (Exhibit B). In the past, the court defined what kind of duty a landowner had to someone who came onto his property and defined the status of trespasser, licensee and invitee. The court now states, in a brief way, that it is not going to care about status anymore. There will be one standard which is termed ordinary care. Two statutes in this bill deal with recreation and with whether a person coming onto a landowners property is an invitee or licensee.

SUPPORTERS: Mr. Scott Ross, on behalf of the coalition of stream access, went on record to support this bill.

Mr. Jim Flynn, Department of Fish, Wildlife and Parks, submitted written testimony. (Exhibit C). He supports the clarification of the legal standard governing landowner liability under two circumstances. The standard of wilful or wanton misconduct under present law and under the amendments of this bill, describe the duty owed by landowners or tenants toward recreationists portaging or using protage routes and toward persons recreating on land where no payment was made for the privilege.

Mr. Stan Bradshaw, State Council of Trout Unlimited, supports this bill in the fact that landowners should have limited liability.

Ms. Jean Klobnak, Montana Wildlife Federation, went on record to state that the federation supports this bill.

Representative Edward Grady supports HB #42 in hopes it will relieve landowners burdens.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 42: Representative Tom Bulger, questioned Rep. Cobb regarding furnishing an example which would give the difference between the two standards of care. He explained the higher duty the landowner has if someone goes on his property with his knowledge. The landowner must make invitee aware of any existing dangers.

Representative Ralph Eudaily questioned Rep. Cobb regarding amendment two, which states "as otherwise provided by law".

Rep. Cobb asked John MacMaster, staff attorney, to explain this. Mr. MacMaster replied that Mr. Petesce decided that instead of specifically listing terms this particular term would be have a general use.

Representative Tom Hannah asked Rep. Cobb about the term recreational use of land. As an example he referred to a neighbors child that comes into his ditch and drowns. Whose duty would it be? Rep. Cobb answered by stating that the child was not using the ditch for recreational purposes so the duty is at a lower rate. Rep. Cobb explained that this bill will clarify but will not change the bill. No law is being rewritten.

There were no further proponents or opponents. Rep. Cobb closed.

EXECUTIVE SESSION:

ACTION ON HB #53: Rep. Gould moved that HB #53 DO PASS. The motion was seconded. Question was called, and all voted in favor with the exception of Rep. Hannah.

ACTION ON HB #42: Rep. Mercer moved that HB #42 DO PASS AS AMENDED. The motion was seconded. Question was called, and the vote was carried unanimously.

ACTION ON HB #21: Rep. Brown read the amendments to be added. (Exhibit D). He stated that he feels this is a reversion clause that basically says, if the Supreme Court upholds the South Dakota suit, the Montana law reverts back to existing statute, age 19. Rep. Brown moves the amendments. Discussion on the amendments follows: Rep. Addy tries to understand the mechanics of the bill and questions if we are amending the title or the existing amendment. Chairman Lory requests that John MacMaster, staff attorney, clarify this point. Mr. MacMaster states that if the United States Supreme Court strikes down the federal law that is requiring us to amend this, then what will happen under the new section 16 that Rep. Brown is putting in, is that the first ten (10) sections now in the bill will be repealed. The first five (5) sections which are essentially the grandfather will be repealed. Section 6-10 which then sets the age at 21 will also be repealed. Section 11, 12, 13, 14, and 15 of Rep. Brown's amendments will go into effect. They are the law as it currently reads. The effective date is essentially in amendment #5.

Rep. Miles feels that the bill amendments do not look different to her.

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

AMENDMENTS TO HB 42, INTRODUCED COPY, PROPOSED BY REP. COBB.

1. Title, line 6.

Following: "23-2-321"

Insert: ", 27-1-701,"

2. Page 2, line 14.

Following: line 13

Insert: "Section 2. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want or ordinary care brought the injury upon himself.""

Renumber: subsequent section

3. Page 2, line 16.

Following: "or"

Insert: "his agent or"

4. Page 2, line 16.

Strike: "landowner" through "tenant" on line 24

Insert: "person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care, except that the landowner, his agent, or his tenant"

5. Page 3, line 1.

Strike: "only"

AHB42a/JM/JM1

STANDING COMMITTEE REPORT

January 9,

1987

Mr. Speaker: We, the committee on JUDICIARY

report House Bill No. 42

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

AMENDMENTS TO HB 42, INTRODUCED COPY, PROPOSED BY REP. COER, Chairman
"AN ACT TO CLARIFY THE LEGAL STANDARD GOVERNING LANDOWNER LIABILITY; AND
AMENDING SECTIONS 23-2-321 AND 70-16-302, MCA."

1. Title, line 6.

Following: "23-2-321"

Insert: ", 27-1-701,"

2. Page 2, line 14.

Following: line 13

Insert: "Section 2. Section 27-1-701, MCA; is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want or ordinary care brought the injury upon himself."

Renumber: subsequent section

3. Page 2, line 16.

Following: "or"

Insert: "his agent or"

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Strike: "landowner" through "tenant" on line 24

Insert: "person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care, except that the landowner, his agent, or his tenant"

5. Page 3, line 1.

Strike: "only"

~~XXXXXX~~

FIRST

reading copy (WHITE)
color

EXHIBIT C
DATE 1-9-87
HB # 42

HB 42
January 9, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The purpose of HB 42 is to clarify the legal standard governing landowner liability under two circumstances. The standard of willful or wanton misconduct under present law and under the amendments of HB 42, describe the duty owed by landowners or tenants toward recreationists portaging or using portage routes and toward persons recreating on land where no payment was made for the privilege.

Because the Montana Supreme Court, in Limberhand v. Big Ditch Company, no longer makes the traditional distinctions between invitee, licensee and trespasser, removing language in the two statutes referring to invitee or licensee will help avoid any confusion as to the meaning of those two statutes.

The department supports this clarification and believes the amendments remove any possible doubt that the landowner's duty of care is defined by the willful or wanton misconduct standard.

WITNESS STATEMENT

NAME R. Scott Ross BILL NO. 42
ADDRESS Box 5221, Helena 59604 DATE 1/9/87
WHOM DO YOU REPRESENT? Coalition for Stream Access
SUPPORT HB42 (CRRB) OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITOR'S REGISTER

JUDICIARY

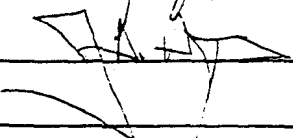
COMMITTEE

AGENCY(S) _____

DATE January 9, 1987

DEPARTMENT _____

PLEASE PRINT.....

NAME	REPRESENTING	SUP- PORT	OP- POSE
R. Scott Ross	Coalition for Stream Access	HP42	
Sheryl Pittman			
	W.H. May, Jr.	1/337	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 3, 1987

The thirty-fourth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 3, 1987, by chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present. Senators Crippen, Brown and Halligan arrived late.

CONSIDERATION OF HOUSE BILL 53: Representative Ralph Eudaily, Missoula, presented the bill with all of its amendments. (Exhibit 1) He explained HB 53 is at the request of the Code Commissioner of the Legislative Council and corrects errors found in the MCA since the last legislative session.

Greg Petesch, Legislative Council, stated the council went through a new procedure this time with Code Commissioners by giving copies of the changes to all agencies, and they in return gave us written testimony on what they agreed with and what they didn't.

DISCUSSION ON HOUSE BILL 53: Senator Blaylock asked if there was any mischief in this bill. Greg Petesch, by word of honor, said there was none.

Representative Eudaily closed the hearing.

Valencia Lane presented to the committee, repealers for HB 53. (Exhibit 2)

CONSIDERATION OF HOUSE BILL 42: Representative John Cobb, Augusta, opened the hearing on HB 42. (Exhibit 3)

PROPOSERS: Jim Flynn, Department of Fish, Wildlife and Parks, supported the bill. (Exhibit 4)

Ted Doney, Montana Water Development Association, supported the bill.

Jeanne Klolnak, Montana Wildlife Association, gave testimony from Stan Bradshaw, Trout Unlimited, in support of HB 42. (Exhibit 5)

Carol Mosher, Montana Cattlemen Association, supported the bill. (Exhibit 6)

Scott Ross, Coalition for Stream Access, supported the bill.

Lorna Frank, Montana Farm Bureau, supported the bill.

Karl Englund, Montana Trial Lawyers Assn., supported the bill and had an amendment. (see witness sheet). He felt the amendment clarifies the landowner does meet the premise liability of someone falling into a hole on his property, is the wilfull and wanton misconduct standard.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 42: Senator Blaylock asked what the amendment does. Mr. Englund explained the duty and care of the land and the duty and care that the landowner may owe a person in terms of his or his employee's acts, should be divided, and that is what the amendment does, is separate these two concepts. (see witness sheet for amendment)

Representative Cobb closed the hearing on HB 42. He presented the committee with a fact sheet on the bill. (Exhibit 6A)

CONSIDERATION OF HOUSE BILL 223: Representative Francis Bardanouve, Harlem, presented House Bill 223 to the committee. (Exhibit 7)

PROPONENTS: Curt Chisholm, Department of Institutions, stated the department already belongs to the Western State Compact. He said it expands the sharing of inmates. He said the only cost to the state is the travel expense. He explained it will take care of "inmate predators" and inmate disciplinary problems, or to protect an inmate. He pointed out that parole authorization will stay within the state, even if the inmate is in an out-of-state prison.

OPPONENTS: There were none.

ACTION ON HOUSE BILL 42: Senator Pinsoneault moved Karl Englund's amendment. The motion carried. Senator Pinsoneault moved HB 42 BE CONCURRED IN AS AMENDED. Senator Mazurek asked if the amended bill applies across the board to all landowners. He asked if it is just recreationists that are under this bill. Valencia Lane said it is a pretty standard amendment for all liability bills. Senator Pinsoneault pointed out a citation (Title 27-1) liability for negligence as well as willful acts. The motion carried.

CONSIDERATION OF HOUSE BILL 335: Senator Mazurek felt Representative Pistoria has a good point. He explained in Helena the private landowner gets the city police to enforce the trespassing ordinance on violators of private parking. Senator Brown asked how that works when a place is closed and someone parks there. Senator Mazurek said if kids "cruising the drag" pulled into a private parking lot of a store, and began to gather, the police could pick them up for trespassing.

Senator Blaylock thought it might be a good idea to have the car in the private lot towed if the towing is less expensive than the barrel, because the barrel costs \$20 to be cut from your car.

Senator Mazurek asked why there can't be an agreement between private parking garages and the city to enforce that these lots are private.

Senator Bishop asked if there was an effective way of collecting the penalties. Senator Mazurek felt the agreement between the private parking people and the city would stop people from filing \$5 lawsuits.

Senator Pinsoneault felt Valencia should look at statutes that would deal with agreements between a state and a local entity that might give the committee an idea on how to handle this bill.

CONSIDERATION OF HOUSE BILL 95: Senator Blaylock felt there was no need for the bill. Senator Bishop agreed. Senator Mazurek said it would be convenient for the parents. He felt if the committee did not like the bill, then let it just sit. Senator Mazurek said he knew a lady who had everything in a trust, except for a little money. He said there was a guardian appointed to her and he felt the accounting procedure on the small amount out of the trust doesn't justify the expense of the accounting procedure that is done every year. The committee did not act on the bill.

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE March 3 1987

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: KARL ENGLUND DATE: 3/3/87

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? MONTANA TRIAL LAWYERS ASSOCIATION

APPEARING ON WHICH PROPOSAL: HB 42

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: AMENDMENT TO HB 42 - 3RD READING COPY
PAGE 3, LINE 14
FOLLOWING: "CARE"
INSERT: "WITH RESPECT TO THE CONDITION,
OF THE PROPERTY"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SUMMARY OF HB42 (COBB)

(Prepared by Senate Judiciary Committee staff)

HB42 was drafted and introduced in response to a recent Supreme Court case, Limberhand v. Big Ditch Co., Mont., 706 P.2d. 491 (1985). Limberhand was a suit brought by a mother for the death of her 18-month-old son who drowned in an irrigation ditch near an apartment that the family was visiting. The lower court granted summary judgment in favor of all the defendants; the city of Billings, the company which owned and operated the ditch, and the individuals who owned the apartment. The Montana Supreme Court upheld the summary judgment as to the city and reversed as to the other defendants because of questions of material fact as to whether the other defendants should have made the premises more safe. The Supreme Court stated that the test for landowner liability is always not the status of the injured party but the exercise of ordinary care in the circumstances by the landowner. Previously, landowner liability had been determined by the duty of care a landowner was deemed to owe to an injured party; with a different duty owed to a trespasser as compared to an invitee or licensee.

This bill was introduced to amend two sections dealing with landowner liability to delete from those sections any references to the status of the injured party, to make the language of the statutes reflect the test adopted in the Limberhand case.

COMMENTS: The amendment adopted by the house is good because it extends the standard of "willful or wanton misconduct" to a trespasser as well as to someone on the property with permission. Without this amendment, it could be argued that under the language of the Limberhand case, a landowner would owe a lesser duty (of ordinary negligence) to a trespasser while owing a higher duty (of willful or wanton misconduct) to others.

C:\LANE\WP\SUMHB42.

HB 42
March 3, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

HB 42 clarifies the legal standard governing landowner liability under two circumstances. The standard of willful or wanton misconduct under present law and under HB 42 describes the duty owned by landowners or tenants toward recreationists portaging or using portage routes and toward persons recreating on land where no payment was made for the privilege.

Amendments in the House Judiciary Committee further clarified present statutes by specifically stating that the landowner is liable for willful or wanton misconduct toward recreational users whether permission had been granted or not.

Because the Montana Supreme Court, in Limberhand v. Big Ditch Company, no longer makes the traditional distinctions between invitee, licensee and trespasser, removing language in the two statutes referring to invitee or licensee will help avoid any confusion as to the meaning of those two statutes.

The department supports this clarification and believes the amendments remove any possible doubt that the landowner's duty of care is defined by the willful or wanton misconduct standard.

H.B. 42

TESTIMONY OF STAN BRADSHAW, TROUT UNLIMITED
BEFORE THE SENATE JUDICIARY COMMITTEE, 3/3/87

Mr. Chairman and members of the Committee, my name is Stan Bradshaw and I represent the Montana State Council of Trout Unlimited, an organization organized to foster and promote the propagation of wild trout and to promote the protection of trout habitat. Implicit in that charge is the recognition of the recreational value of wild trout. The members of Trout Unlimited in Montana are heavy recreational users of the state's rivers and streams.

The State Council of Trout Unlimited supports the passage of H.B. 42. In the last session, Trout Unlimited strongly supported the provisions which minimized landowner liability against lawsuits by recreational users of the state's rivers and streams. In addition, Trout Unlimited supports the proposition that landowners who allow recreational use of their lands without charge should have minimal liability for injury to users. The intent of H.B. 265 and the landowner liability provisions of Title 70 is to provide liability protection to landowners.

H.B. 42 will eliminate any ambiguity caused by the Limberhand decision and will reaffirm the limitations on landowner liability to recreational users. Therefore, Trout Unlimited urges this committee to give a "do pass" recommendation to H.B. 42.



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY IN SUPPORT OF HB 42

BEFORE THE SENATE JUDICIARY COMMITTEE

SENATE JUDICIARY

EXHIBIT NO. 6

DATE March 3, 1981

BILL NO. HB 42

Mr. Chairman, HB 42 will add immeasurably to the stability and clarity of the statutes relating to landowner liability. Recent Montana Supreme Court cases have brought the wording of the present law into apparent conflict with the Court's new approach to standards of care.

Representative Cobb, in removing the words "status", "licensee", and "invitee", has left this statute more readable and less confusing to the layman. Since these standards no longer held up in court, the new language is also more dependable as a source of protection by either party.

The Montana Cattlemen's Assn. especially applauds the amendment concerning recreational use of property. Here is a segment of the law that has always been unstated. In fact, because of the present unspecific statement of liabilities toward recreational users, many landowners have been reluctant to give permission for such use. The House committee did good work in Sec. 3 with their forthright statement of the position of recreational users not paying a fee.

We urge that this bill be quickly sent to the Governor. Thank you.

This bill is to clarify the legal standard governing landowner liability toward recreationists.

The bill describes the duty and responsibility landowners or tenants have toward recreationists under the stream access law of last session as well as to recreationists recreating on land of another where no payment is given to the landowner.

This bill does not change existing law but only clarifies the landowner's duties and responsibilities to recreationists in light of a recent Montana Supreme Court case.

That case is on page 1. Lumberhand vs. Big Ditch Company. In that case an 18 month old child fell into a ditch and drowned.

The Court ruled that the owner of the ditch was liable. The child of course was not using the ditch for recreation. When a court rules in a case like this, the court must decide the duty or responsibility a landowner has to another person who enters his property.

Duties and responsibilities of the landowner can range from low duties and responsibilities to higher duties and responsibilities.

Before the Supreme Court, duties and responsibilities of a landowner toward a person who entered the land depended upon the status or standard of the person who entered the land.

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That status is standard depended upon if a person who entered the land was a trespasser, licensee or invitee. Each status of the person who entered the land made the landowner have different responsibilities to the person.

The landowner owed the trespasser a lower duty -- liable only for an act that constituted willful or wanton misconduct--settraps.

An invitee was owed a higher duty of ordinary care. An invitee is someone who comes onto the property for mutual benefit of owner and himself -- like going into a store to buy something.

So the liability to a person who entered the property depended on the status of that person.

There was an exception though to these duties of a landowner to a person who entered onto the property if it was for recreational purposes. That is, it didn't matter if you were a trespasser, licensee or invitee as long as the use of the property was for recreation -- the landowner's duty to an injured person if he was recreating was only for an act that constitutes willful and wanton misconduct. This is a very low duty. The reason was to encourage opening up access for lands for recreation.

The Montana Supreme Court in the case cited on page 1 did away with the classification system of trespasser, licensee and invitee for determining duties and responsibilities of the

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property owner to a person who entered the property and was injured.

The Court also held that the duty of the property owner was now the duty of ordinary case -- the same as an invitee under the old law.

This bill simply takes out the words licensee and invitee in recreational use of property to conform with the Court ruling doing away with different classifications of persons entering property.

However, the Legislature is leaving the same exception in the law as existed before the Court ruling -- that is for persons entering property for recreational purposes and not being charged for the use of the property for recreational purposes-- the duty of the landowner is only for an act of willful and wanton misconduct.

STANDING COMMITTEE REPORT

March 3

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19.....

MR. PRESIDENT

We, your committee on..... **SENATE JUDICIARY**

having had under consideration..... **HOUSE BILL** No. **42**

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**Clarify legal standard governing landowner liability.
Cobb (Pinsonneault)**

Respectfully report as follows: That..... **HOUSE BILL** No. **42**

be amended as follows:

1. Page 3, line 14.

Following: "CARE"

Insert: "with respect to the condition of the property"

**AND AS AMENDED
BE CONCURRED IN**

~~DETECTIVE~~

.....
Senator Mazurek

Chairman.